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Letter Ruling 86-9: Sale-Leaseback of Equipment

December 3, 1986

You asked for a ruling on the application of the Massachusetts sales tax to a sale-leaseback of communications equipment purchased by ("Utility Company"). The Utility Company is primarily engaged in the distribution of a utility (not communications service) to commercial and residential customers. The Utility Company entered into a contract with ("Vendor") to purchase a communications system.

After entering the contract, the Utility Company decided that leasing the equipment would be more economically beneficial than an outright purchase. The Utility Company began to negotiate a lease agreement with Lessor # 1, a leasing company. The Utility Company intended to assign its rights under the contract to Lessor #1. The plan was for Lessor #1 to take title to the equipment and immediately lease the equipment back to the Utility Company.

During the lease agreement negotiations with Lessor #1, the Utility Company made progress payments to the Vendor who proceeded with installation. After the Utility Company formally accepted the system and before the scheduled completion of progress payments, Lessor #1 and the Utility Company broke off negotiations because they could not agree on the terms of the lease. The Utility Company immediately contacted Lessor #2 and began negotiating a new lease agreement. Lessor #2 and the Utility Company agreed that because of the time required to reach final lease terms, the Utility Company would complete progress payments for the communications system, take title to the system, and then sell the equipment to Lessor #2.

When title to the equipment passed to the Utility Company, the Utility Company presented a resale certificate to the Vendor. The Vendor refused the resale certificate because the Utility Company did not intend to resell the communications system in the regular course of business.

The Utility Company asks whether the Vendor may accept a resale certificate from the Utility Company. We conclude that the Vendor may not accept a resale certificate. The Utility Company asks whether the Utility Company's sale of the communications system is an exempt casual sale. We conclude that the sale is an exempt casual sale. The Utility Company asks whether the lease payments made by the Utility Company to Lessor #2 are subject to tax. We conclude that the payments are subject to tax. We assume for purposes of this ruling that the Utility Company is registered as a Massachusetts vendor.

I. The Vendor's Sale to the Utility Company

Massachusetts General Laws Chapter 64H imposes a five percent sales tax on all retail sales of tangible personal property, see G.L. c. 64h, § 2, unless otherwise exempted. A retail sale is defined as "a sale of tangible personal property for any purpose other than resale in the regular course of business." G.L. c. 64H, § 1(i3). All gross receipts from a vendor's sales of tangible personal property are presumed to be from taxable sales. The burden of proving that a sale of tangible personal property is not a retail sale unless the vendor takes a resale certificate from the purchaser. See G.L. c. 64H, § b(a). But the resale certificate relieves the vendor of the burden of proof if the vendor takes certificate in good faith from a person who is engaged in the business or selling the particular type of tangible personal property and if the purchaser intends to sell the property in the

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regular course of business. G. L. c. 64H, § 8 (b) .

The Utility Company is not engaged in the business of selling communications systems, and the Utility Company did not intend to sell the communications system it purchased in the regular course of business. The Utility Company's regular course of business is the furnishing of a utility, not the sales of communications systems. We conclude that the Vendor was correct in refusing to accept a resale certificate from the Utility Company, and the Vendor's sale of the communications system is subject to tax.

II. The Utility Company's Sale to Lessor #2

"Casual and isolated sales by a vendor who is not regularly engaged in the business of making sales at retail" are exempted from the sales tax. G.L. c. 64h, § 6(c). The Sales and Use Tax Regulation ,on Casual and Isolated Sales states that casual and isolated sales "include sales of items of tangible personal property which were acquired for use or consumption by a seller and not sold in the regular course of business engaged in by such seller. 830 CMR 16.01.

The utility Company acquired the communications system for its own use and did not sell the communications system to Lessor #2 in the regular course of its business. Therefore, the Utility Company's sale of the communications system to Lessor #2 is exempt from the sales tax as a casual and isolated sale.

III. Lessor #2's Leaseback to the Utility Company

As stated above, all retail sale of tangible personal property are subject to tax, unless otherwise exempted. See G.L. c. 64H, §§ 2, 6. The definition of "sale" includes "any transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of tangible personal property for a consideration, in any manner or by any means whatsoever." G.L. c. 64H, § 1(12)(a) (emphasis added).

No sales tax exemption applies to Lessor #2's leaseback of communications equipment to the Utility Company. See G.L. c. 64H, § 6. Lessor #2 should therefore collect sales tax from the Utility Company.

You may wish to consult the Sales and Use Tax Regulation on Automatic Data Processing and Letter Ruling 85-27 and 84-75 (copies enclosed) on the distinctions between leases and installment sales for sales tax purposes. These documents state the Department's general rules on the collection and payment of sales tax on installment sales and leases.

Very truly yours,
/s/Ira A. Jackson
Commissioner of Revenue
December 3, 1986
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